

**STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION**

IN THE MATTER OF:)	
)	DIVISION OF WATER
)	POLLUTION CONTROL
)	
STERLING B. MARLIN)	
)	
)	
RESPONDENT)	CASE NO. 07-097D

DIRECTOR'S ORDER AND ASSESSMENT

NOW COMES Paul E. Davis, Director of the Division of Water Pollution Control,
and states:

PARTIES

I.

Paul E. Davis is the duly appointed director of the Division of Water Pollution Control (hereinafter the "division") by the commissioner of the Tennessee Department of Environment and Conservation (hereinafter the "department").

II.

Sterling B. Marlin, (hereinafter the "Respondent") owns property located at the intersection of Nashville Highway and Columbia Rock Road in Maury County, Tennessee, a 52 acre parcel listed as the Harvey Tract on County land records (hereinafter the "site").

Service of process may be made on the Respondent at 844 Mahon Road, Columbia, Tennessee 38401.

JURISDICTION

III.

Whenever the commissioner has reason to believe that a violation of the Water Quality Control Act of 1977 (hereinafter the "Act"), Tennessee Code Annotated (T.C.A.) § 69-3-101 et seq, has occurred or is about to occur, the commissioner may issue a complaint to the violator and may order corrective action be taken pursuant to T.C.A. § 69-3-109(a) of the Act. Further, the commissioner has authority to assess civil penalties against any violator of the Act, pursuant to T.C.A. § 69-3-115; and has authority to assess damages incurred by the state resulting from the violation, pursuant to T.C.A. § 69-3-116. Department rules governing general water quality criteria and use classifications for surface waters have been promulgated pursuant to T.C.A. § 69-3-105 and are effective as Chapters 1200-4-3-4 of the *Official Compilation: Rules and Regulations of the State of Tennessee*. Pursuant to T.C.A. § 69-3-107(13), the commissioner may delegate to the director of the division any of the powers, duties, and responsibilities of the commissioner under the Act.

IV.

The Respondent is a "person" as defined by T.C.A. § 69-3-103(20) and, as herein described, has violated the Act.

V.

Haley Branch, referred to herein, is "waters of the state" as defined by T.C.A. § 69-3-103(33). Pursuant to T.C.A. § 69-3-105(a)(1), all waters of the state have been classified by the Tennessee Water Quality Control Board for suitable uses. In accordance with Department Rule 1200-4-4, "Use Classifications for Surface Waters," these water bodies have been classified for the following uses: fish and aquatic life, recreation, irrigation, and livestock watering and wildlife.

VI.

Tennessee Code Annotated § 69-3-108 requires a person to obtain coverage under a permit from the department prior to discharging any substances to waters of the state, or to a location from which it is likely that the discharged substance will move into waters of the state. Coverage under the Tennessee General Permit for Storm Water Discharges Associated with Construction Activity (hereinafter the "TNCGP") may be obtained by submittal of a Notice of Intent (NOI).

FACTS

VII.

On February 14, 2007, division personnel conducted an inspection at the site and discovered that un-authorized land disturbance activities were being conducted. Grading and fill activities were underway without Erosion Prevention and Sediment Control measures (EPSCs) installed to prevent sediment migrating from the site. Division personnel informed the Respondent's employees at the site that coverage under the

TNCGP was required before work of that nature could be performed. A subsequent file review confirmed that a NOI to obtain coverage for the site under the TNCGP had not been submitted to the division.

VIII.

On February 16, 2007, a Notice of Violation (NOV) was issued to the Respondent for the violations observed during the February 14, 2007, site inspection. These violations included clearing, grading, filling, excavation, and other construction activities without adequate control measures, and without permit authorization.

IX.

On February 16, 2007, the Respondent's site engineer contacted the division via telephone to discuss obtaining coverage under the TNCGP for the activities planned to occur at the site. The Respondent's site engineer informed the division that it would be at least a week before he could submit a NOI. Division personnel asked if the construction activities at the site would cease until that time, and were informed that they would probably continue to occur. It was stated that the Respondent temporarily had access to free fill material and they would probably continue to receive and place that material in the interim.

X.

On February 28, 2007, the division received a voicemail from the Respondent stating that his engineer had submitted the NOI to obtain TNCGP coverage. Division personnel attempted to contact the Respondent and left a message informing him that the

NOI had been received, but that activity should not be occurring at the site until the NOI was processed and coverage had been issued.

XI.

On March 1, 2007, the division contacted the Respondent's engineer to discuss the NOI package that had been submitted on behalf of the Respondent. The Respondent's engineer informed the division that work would probably resume at the site on the following Monday, even after being informed that coverage would not be issued by that date. The division was informed by the site engineer that the Respondent would probably choose to pay the penalties for continuing to violate the Act rather than stop the unauthorized construction activities.

XII.

On March 1, 2007, division personnel conducted a follow up inspection at the site during a rain event. Sediment was observed migrating off the property and into waters of the state. EPSCs had not been installed in many locations at the site where needed, and were inadequate in the few locations where they had been installed.

XIII.

On March 6, 2007, division personnel contacted the Respondent's engineer to discuss conditions at the site and the violations observed during the March 1, 2007, site inspection. The division was informed that additional EPSCs would be implemented and others re-installed where necessary, and that a re-inspection would be requested upon

completion. The division informed the Respondent's representative that permit coverage would not be issued until EPSC measures were corrected and adequate for the site.

Division personnel visited the site and observed that fill operations were still being conducted, even though permit coverage had not yet been issued.

XIV.

On March 7, 2007, division personnel met with the Respondent at the site to discuss the need for additional EPSCs and the fact that construction activities had continued without permit coverage.

A second NOV was issued to the Respondent for the continuing violations observed on March 1, 6, and 7, 2007.

VIOLATIONS

XV.

By conducting activities without coverage under the Tennessee General Permit for Storm Water Discharges Associated with Construction Activity, the Respondent has violated T.C.A. §§ 69-3-108(a)(b) and 69-3-114(b).

§ 69-3-108 states, in part:

- (a) Every person who is or is planning to carry on any of the activities outlined in subsection (b), other than a person who discharges into a publicly owned treatment works or who is a domestic discharger into a privately owned treatment works, or who is regulated under a general permit as described in subsection (j), shall file an application for a permit with the commissioner or, when necessary, for modification of such person's existing permit.
- (b) It is unlawful for any person, other than a person who discharges into a publicly owned treatment works or a person who is a domestic discharger into a privately owned treatment works, to carry out any of the following activities, except in accordance with the conditions of a valid permit:

- (1) The alteration of the physical, chemical, radiological, biological, or bacteriological properties of any waters of the state;
- (4) The development of a natural resource or the construction, installation, or operation of any establishment or any extension or modification thereof or addition thereto, the operation of which will or is likely to cause an increase in the discharge of wastes into the waters of the state or would otherwise alter the physical, chemical, radiological, biological or bacteriological properties of any waters of the state in any manner not already lawfully authorized;
- (6) The discharge of sewage, industrial wastes, or other wastes into water, or a location from which it is likely that the discharged substances will move into waters;

§ 69-3-114(b) states, in part:

- (b) In addition, it is unlawful for any person to act in a manner or degree which is violative of any provision of this part or of any rule, regulation, or standard of water quality promulgated by the board or of any permits or orders issued pursuant to the provisions of this part; or fail or refuse to file an application for a permit as required in §69-3-108; or to refuse to furnish, or to falsify any records, information, plans, specifications, or other data required by the board or the commissioner under this part.

XVI.

By failing to install erosion prevention and sediment control devices at a land disturbance activity, the activity described herein did or was likely to cause an increase in the discharge of wastes into the waters of the state. Therefore, the Respondents have violated T.C.A. Sections 69-3-108(b) and 69-3-114(b), as referenced above.

XVII.

By causing a condition of pollution to Haley Branch, the Respondent has violated T.C.A. § 69-3-114(a).

§ 69-3-114(a) states, in part:

- (a) It is unlawful for any person to discharge any substance into waters of the state or to place or cause any substance to be placed in any location where such substances, either by themselves or in combination with others, cause any of the damages as defined in Section 69-3-103 (22), unless such discharge shall be due to an unavoidable accident or unless such action has been properly authorized. Any such action is declared to be a public nuisance.

ORDER AND ASSESSMENT

XVIII.

WHEREFORE, pursuant to the authority vested by T.C.A. §§ 69-3-107, 109, 115–16, I, Paul E. Davis, hereby issue the following ORDER AND ASSESSMENT to the Respondent:

1. The Respondents shall, within 15 days of receipt of this Order and Assessment, implement appropriate EPSC measures to ensure that no eroded material leaves the site and enters waters of the state. Documentation that EPSC measures have been implemented and a request for division approval is to be sent within 20 days of receipt of this Order and Assessment to the manager of the Division of Water Pollution Control located at the Columbia Environmental Field Office (CL-EFO), and a copy shall also be sent to the manager of the Enforcement & Compliance Section, Division of Water Pollution Control, located at 401 Church Street, L&C Annex 6th Floor, Nashville, TN 37243.
2. The Respondents shall maintain appropriate EPSC measures to ensure that no additional material leaves the site and enters waters of the state. The EPSC

measures shall be maintained until permanent erosion preventive vegetative cover is established.

3. The Respondent shall, within 20 days of receipt of this Order, submit an updated SWPPP for review and approval to the Water Pollution Control manager at the CL-EFO and a copy to the E & C manager at the addresses above.
4. The Respondent shall, within 6 months of receipt of this Order, provide documentation of attendance and successful completion of the department's Erosion Prevention and Sediment Control Workshop, for all employees who manage or oversee construction projects, to the Water Pollution Control manager at the CL-EFO and a copy to the E & C manager at the addresses above.
5. The Respondent is hereby assessed a CIVIL PENALTY in the amount of THIRTY TWO THOUSAND FIVE HUNDRED DOLLARS (\$32,500.00), payable as follows:
 - a. The Respondent shall, within 30 DAYS of receipt of this Order and Assessment, pay to the division EIGHT THOUSAND ONE HUNDRED DOLLARS (\$8,100.00).
 - b. The Respondent shall pay EIGHT THOUSAND FOUR HUNDRED FIFTY DOLLARS (\$8,450.00) to the division in the event the

Respondent fails to comply with Item 1 above, to be paid within 30 days of default.

c. The Respondent shall pay EIGHT THOUSAND FOUR HUNDRED FIFTY DOLLARS (\$8,450.00) to the division in the event the Respondent fails to comply with Item 2 above, to be paid within 30 days of default.

d. The Respondent shall pay FIVE THOUSAND DOLLARS (\$5,000.00) to the division in the event the Respondent fails to comply with Item 3 above, to be paid within 30 days of default.

e. The Respondent shall pay TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500.00) to the division in the event the Respondent fails to comply with Item 4 above, to be paid within 30 days of default.

The Respondent shall otherwise conduct business in accordance with the Act and rules promulgated pursuant to the Act.

The director of the Division of Water Pollution Control may, for good cause shown, extend the compliance dates contained within this Order and Assessment. In order to be eligible for this time extension, the Respondent shall submit a written request to be received a minimum of 30 days in advance of the compliance date. The request must include sufficient detail to justify such an extension and include at a minimum the anticipated length of the delay, the precise cause or causes of the delay, and all preventive measures taken to minimize the delay. Any such extension will be in writing.

Further, the Respondent is advised that the foregoing Order and Assessment is in no way to be construed as a waiver, expressed or implied, of any provision of the law or regulations. However, compliance with the Order and Assessment will be one factor considered in any decision whether to take enforcement action against the Respondent in the future.

Issued by the director of the Division of Water Pollution Control on this 10th day of May 2007.

A handwritten signature in black ink, appearing to read "Paul E. Davis", written over a horizontal line.

PAUL E. DAVIS, P.E.

Director, Division of Water Pollution Control

NOTICE OF RIGHTS

Tennessee Code Annotated §§ 69-3-109, 115, allow any Respondent named herein to secure review of this Order and Assessment. In order to secure review of this Order and Assessment, the Respondent must file with the director at the address below a written petition setting forth each of the Respondent's contentions and requesting a hearing before the Water Quality Control Board. The Respondent must file the written petition within thirty (30) days of receiving this Order and Assessment.

If the required written petition is not filed within thirty (30) days of receipt of this Order and Assessment, the Order and Assessment shall become final and will be considered as an agreement to entry of a judgment by consent. Consequently, the Order and Assessment will not be subject to review pursuant to T.C.A. §§ 69-3-109, 115.

Any hearing of this case before the Water Quality Control Board for which a Respondent properly petitions is a contested case hearing governed by T.C.A. § 4-5-301 et seq of the Uniform Administrative Procedures Act, and the Department of State's Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies. The hearing is in the nature of a trial before the Board sitting with an Administrative Law Judge. The Respondent may subpoena witnesses on its behalf to testify.

If the Respondent is an individual, the Respondent may either obtain legal counsel representation in this matter, both in filing its written petition and in presenting evidence at the hearing, or proceed without an attorney. Low-income individuals may be eligible

for representation at no cost or reduced cost through a local bar association or legal aid organization.

Payment of the civil penalty shall be made payable to "Treasurer, State of Tennessee," and sent to the Tennessee Department of Environment and Conservation, Division of Water Pollution Control - Enforcement & Compliance Section, 6th Floor L&C Annex, 401 Church Street, Nashville, TN 37243. All other correspondence regarding this matter should be sent to Paul E. Davis, Director, Division of Water Pollution Control, at the address above. All payments and correspondence should include the Respondent's name and case number as shown on the first page of this Order and Assessment.